

REMARKS

Various of claims 19-39 have been amended to obviate the Section 112 rejection based on antecedence. Most of these amendments were not made earlier because this Section 112 rejection was made for the first time in the final rejection. The examiner's work in this area is appreciated. However, note that for claim 19, at line 42, "the one of the independent suppliers" finds antecedence at lines 32-33. Also, claim 19, at line 48, "the plurality" finds antecedence at line 45. Also, for claim 27, line 3, "the supply chain electronic database" finds antecedence in claim 19, lines 11-12. Comparable basis for these same instances applies for claims 29 and 37.

In response to the provisional double patenting rejection, applicants will be happy to consider a terminal disclaimer when another one of applicant's applications is patented with conflicting claims.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

The rejection under 35 USC 101 for the claimed system and program product lacking utility is respectfully traversed. The examiner states that the claims merely recite "code capable of performing functions, but do not positively recite the performance of these functions." Note that there claims are not directed to a method, which requires performance of a specific set of method steps. Rather, claims 19-28 are directed to a system with a memory and an independent supply chain manager computer "operatively connected to the memory and comprising one or more processors. The system is recited to include the functions, when it is operated, of sending a communication to at least one of the independent franchise stores or to one of the independent suppliers, providing electronic access to the electronic log or providing an electronic communication that includes information from the electronic log of discrepancies in the format, and of providing an interface accessible from the network to the franchise store sales data for the second set of franchise stores, and providing an interface on the network for plurality of franchise stores in the group to data relating to the franchise stores in the group. Note that the claims are clearly limited to the practical application of managing franchise stores, based on real world supplier master contracts, item sales by suppliers, and the data on the sales of goods by the franchise stores.

Claims 1-18 were rejected under 35 USC 103 over a seven-way combination of references. This rejection is respectfully traversed because the seven-way reference combination does not make out a prima facie case under the law or under the requirements of the MPEP, and reconsideration is requested.

The rejection uses the Whopping Inventory Task plus the Relevance of each Document as a base reference and then modifies this combination with teachings from four other references plus an Examiner's Official Notice.

The present invention is directed to solving the problems that arise with point of sale data from stores (which is typically keyed in manually) in an independent store – independent supplier – independent supply chain manager context. Note that the Whopping Inventory Task plus the Relevance of each Document do not receive point of sale data from stores. Rather, data is received from suppliers in the system and entered into the system. This is because the system is directed to managing suppliers. The rejection states that the Whopping Inventory Task plus the Relevance of each Document system is modified by the examiner to receive point of sale data from stores (discussed in Noori) to make the suppliers more responsive. However, the point of the claim is to manage stores, not suppliers, through the data received from the stores. This point will be brought out as further limitations in the claim are discussed.

One of the problems with over-the-counter sales stores is the keying of data and the errors from that keying and the reporting of incorrect categorization of sold products. This is a particular problem in the claimed context of an independent supply chain where independent stores need not use particular product categories to report sales data. The independent stores in the claimed system rely on the independent supplier chain manager to control the relationship with their suppliers through independent supply chain manager-negotiated master contracts that use standard product categories, so that mis-keying and mis-categorization mistakes are a significant problem that, in the claimed system, are not only corrected, but also logged and reported back to the store to prevent such mistakes in the future. This context is not present in any of the six references or the Examiner Notice. The Noori reference that is relied on in the rejection to teach receiving point of sale data does not have the problem of mis-keying data because the “clerk scans the bar code label” of the product being sold and there is no discussion of mis-categorization of products.

Jost is cited in the rejection for the teaching of having a minimum format for database entries. See Column 57, line 62, cited in the rejection. Jost is a system for automating telephony services. One of ordinary skill in the art of retail supply chain management would not look to Jost as a teaching because Jost is not in the retail supply chain art. Moreover, there is no motivation cited as to why one of ordinary skill in the art would take a teaching on telephony minimum formats and use it to modify the Whopping Inventory Task plus the Relevance of each Document references which are directed to suppliers, not stores, and there is no teaching on how one would make such a modification. Also, the automated telephony signals of Jost do not have the problems of mis-keying and mis-categorization of a manual over the counter sales operation.

The rejection further cites the IBM Technical Bulletin for a teaching of logging errors. However, the IBM Technical Bulletin teaches a database recovery log containing changes to database records for an on-line recovery of data after I/O or power failures, i.e., a system crash. For example, incomplete writes during a system restart are detected and logged. One of ordinary skill in the art of retail supply chain management would not look to a system for crash data recovery taught by IBM because it is in an unrelated art. Moreover, there is no motivation in any of the references for making such a modification, much less a teaching of how such a modification would be made to realize the claimed system.

Further relating to the claimed system of managing data, the following claim limitations are included: “a component for the independent supply chain manager computer receiving data from the independent suppliers and/or independent franchise stores and/or distributors utilizing the network, the data relating to the supply of the at least one item from the independent suppliers directly or indirectly to the independent franchise stores;” and “a component for automatically comparing at least one contract term in one of the supplier master contracts for the at least one item to received data relating to the supply of the at least one item.” The reference Shavit is cited for a teaching of comparing data received relating to actual purchases to terms in a master contract and sending an alert if there is a discrepancy. But the Shavit reference teaches the use of master contracts between a supplier and a buyer, and describes placing orders on line against that master contract. “When ordering against an umbrella agreement, the buyer enters an agreement number and thus defines the terms of the order and may define the shipping address as well.” Column 13, lines 39-42 of Shavit. There is no independent contractor activity involved in Shavit that must be reviewed against a master contract that was negotiated not by the buyer, but rather by an independent supply chain manager. Shavit does not teach “receiving data” on the actual supply of the item and comparing that data to a term in the master contract. Such a comparison operation would make no sense in Shavit because the orders are being made within the Shavit system against the master contract, so that there could be no discrepancy. Thus, one of ordinary skill in the retail supply chain art would not see a comparison teaching in Shavit.

The rejection further takes Examiner Notice that it is old in the art to send a notice of a discrepancy. However, there is no teaching provided of detecting a discrepancy between an actual supply transaction between a supplier and a buyer and terms in a master contract. So sending a notice of such a discrepancy in that situation could not be obvious.

The rejection further uses Shavit to teach the claim limitation “a component for providing an interface accessible on the network to allow access by each of the plurality of the independent franchise stores to data relating to supplier master contracts associated with that independent franchise store and to data relating to independent franchise stores in the group.”

However, Shavit and the other references cited in the rejection do not teach independent stores getting access to "data relating to independent franchise stores in the group," i.e., data from other stores in the group or derived from such data. Shavit teaches master contracts between a buyer and a seller. Likewise, Noori teaches providing information electronically from a store to its supplier. Neither Shavit nor Noori teach anything about disclosing access to "data relating to independent franchise stores in the group."

Multiple Official Notices have been taken for claim elements that are missing in the six references cited. Applicants timely traverse/ challenge these official notice statements, and timely request under MPEP 2144.03 that each instance where official notice is taken be supported by a citation to a teaching in a prior art reference, and that a suggestion in the prior art be pointed out to provide motivation to combine such Noticed elements with any cited references to realize the claimed combination.

Applicant traverses the rejection of the dependent claims, and reserves the right to argue the substance of those dependent claims on appeal.

The foregoing rejection has used the applicants' disclosure and claims as a blueprint for the rejection. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable consideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date 10/7/05

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874